

## RESOLUTION 11-17

**A RESOLUTION OF THE GOVERNING BOARD OF THE MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT MAKING FINDINGS, CERTIFYING THE NOTICE OF EXEMPTION, AMENDING RULE 315 – FEDERAL CLEAN AIR ACT SECTION 185 PENALTY AND DIRECTING STAFF ACTIONS.**

On October 24, 2011, on motion by Member **BLEWETT**, seconded by Member **CAMARGO**, and carried, the following resolution is adopted:

**WHEREAS**, the Mojave Desert Air Quality Management District (MDAQMD) has authority pursuant to California Health and Safety Code (H&S Code) §§40702, 40725-40728 to adopt, amend or repeal rules and regulations; and

**WHEREAS**, the proposed amendments will implement the requirements of Section 185 of the Federal Clean Air Act to stop potential sanctions being imposed by the United States Environmental Protection Agency (USEPA) as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy; and

**WHEREAS**, potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding; and

**WHEREAS**, the MDAQMD originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 28, 2011; and

**WHEREAS**, the MDAQMD submitted Rule 315 to the California Air Resources Board (CARB) on March 31, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to USEPA on April 22, 2011 as a revision to the SIP; and

**WHEREAS**, USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock; and

**WHEREAS**, under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185; and

**WHEREAS**, for the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable; and

**WHEREAS**, the MDAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP; and

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1       **WHEREAS**, the Federal Clean Air Act (FCAA) requires areas designated non-attainment and  
2 classified moderate and above to implement Reasonably Available Control Technology (RACT) for  
3 sources subject to Control Technology Guidelines (CTG) documents issued by United States  
4 Environmental Protection Agency (USEPA) for “major sources” of VOCs and oxides of nitrogen (NO<sub>x</sub>)  
5 which are ozone precursors; and

6       **WHEREAS**, there is no CTG for this source category, and there are no major sources of internal  
7 combustion engines in agricultural operations located within the MDAQMD, therefore, RACT is not  
8 required for Rule 1160.1; and

9       **WHEREAS**, the MDAQMD is also non-attainment for both federal and state Particulate Matter  
10 (PM<sub>10</sub>) ambient air quality standards; and

11       **WHEREAS**, the federal non-attainment status requires provisions assuring Reasonably Available  
12 Control Measures (RACM) be implemented within the nonattainment area; and

13       **WHEREAS**, while there are no similar specific state attainment planning or rulemaking  
14 requirements for PM<sub>10</sub> non-attainment areas former H&S Code §39614(d) (expired by its terms January 1,  
15 2011) required the MDAQMD to adopt the most readily available, feasible and cost-effective local  
16 control measures for PM as contained on a list developed by the California Air Resources Board (CARB);  
17 and

18       **WHEREAS**, since the MDAQMD committed to adopt such reasonable measures pursuant to  
19 H&S Code §39614(d) and is also required to do so to satisfy federal RACM requirements the MDAQMD  
20 evaluated the availability, feasibility and cost effectiveness of the applicable CARB internal combustion  
21 engine control measures to satisfy both requirements; and

22       **WHEREAS**, the proposed adoption of the new rule is necessary to implement the provisions of  
23 SB 700 of 2003 (H&S Code §§40724-40724.7); and

24       **WHEREAS**, the proposed adoption of the new rule is also necessary to satisfy the MDAQMDs  
25 commitment to adopt readily available feasible and cost-effective PM measures pursuant to former H&S  
26 Code §39614(d); and

27       **WHEREAS**, the proposed adoption of the new rule is also necessary to satisfy the Federal PM  
28 RACM requirement for this source category; and



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1       **WHEREAS**, the MDAQMD has the authority pursuant to H&S Code §40702 to adopt rules and  
2 regulations; and

3       **WHEREAS**, the proposed new rule is clear in that the meaning can be easily understood by the  
4 persons impacted by the rule; and

5       **WHEREAS**, the proposed new rule is in harmony with, and not in conflict with, or contradictory  
6 to existing statutes, court decisions, or state or federal regulations; and

7       **WHEREAS**, the proposed new rule does not impose the same requirements as any existing state  
8 or federal regulation because this rule implements the provisions of SB 700 pertaining to all internal  
9 combustion engines which are agricultural sources of air pollution as defined in H&S Code §39011.5; and

10       **WHEREAS**, the proposed new rule also does not impose the same requirements as former H&S  
11 Code §39614(d) since that provision merely required the adoption of reasonable measures and did not  
12 impose such measures directly; and

13       **WHEREAS**, the proposed new rule does not impose the same requirements as federal law in that  
14 federal law merely requires the adoption and update of RACM for existing facilities in a particular source  
15 category but does not directly impose such measures upon such facilities; and

16       **WHEREAS**, the proposed new rule is needed to implement the provisions of SB 700, to make a  
17 federal RACT determination, to satisfy the MDAQMDs commitment to adopt readily available feasible  
18 and cost-effective PM measures pursuant to former H&S Code §39614(d), and to satisfy the federal PM  
19 RACM requirement for this source category; and

20       **WHEREAS**, a public hearing was properly noticed on May 27, 2011 for the June 27, 2011  
21 Governing Board meeting; and

22       **WHEREAS**, the June 27, 2011 hearing was continued to the July 25, 2011 Governing Board  
23 meeting, which was cancelled and this item was moved to the next regularly scheduled meeting of August  
24 22, 2011; and

25       **WHEREAS**, the item was again continued to the September 26, 2011 Governing Board meeting,  
26 and then again to the October 24, 2011 Governing Board meeting to address substantive comments from  
27 CARB, USEPA, and the public; and

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1       WHEREAS, therefore, a public hearing has been properly noticed and conducted, pursuant to  
2 H&S Code §40725, concerning the proposed adoption of new Rule 1160.1; and

3       WHEREAS, a Notice of Exemption, a Categorical Exemption (Class 8, 14 CCR §15308) for the  
4 proposed adoption of new Rule 1160.1, completed in compliance with the California Environmental  
5 Quality Act (CEQA), has been presented to the Governing Board of the MDAQMD; each member having  
6 reviewed, considered and approved the information contained therein prior to acting on the proposed  
7 adoption of new Rule 1160.1, and the Governing Board of the MDAQMD having determined that the  
8 proposed amendments will not have any potential for resulting in any adverse impact upon the  
9 environment; and

10       WHEREAS, the Governing Board of the MDAQMD has considered the evidence presented at the  
11 public hearing; and

12       **NOW, THEREFORE, BE IT RESOLVED**, that the Governing Board of the MDAQMD finds  
13 that the proposed adoption of new Rule 1160.1 – *Internal Combustion Engines in Agricultural Operations*  
14 are necessary, authorized, clear, consistent, non-duplicative and properly referenced; and

15       **BE IT FURTHER RESOLVED**, that the Governing Board of the MDAQMD hereby makes a  
16 finding that the Class 8 Categorical Exemption (14 CCR §15308) applies and certifies the Notice of  
17 Exemption for the proposed adoption of new Rule 1160.1; and

18       **BE IT FURTHER RESOLVED**, that the Governing Board of the MDAQMD does hereby adopt,  
19 pursuant to the authority granted by law, proposed new Rule 1160.1, as set forth in the attachments to this  
20 resolution and incorporated herein by this reference; and

21       **BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately upon adoption,  
22 that the Clerk of the Board is directed to file the Notice of Exemption in compliance with the provisions  
23 of CEQA.  
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1 **PASSED, APPROVED AND ADOPTED** by the Governing Board of the Mojave Desert Air Quality  
2 Management District by the following vote:

3 AYES: 11 MEMBER: DECONICK, BLEWETT, DERRY, CAMARGO, MITZELFELT,  
4 RIORDAN, ROTHSCHILD, COLE, STANTON, CAMPBELL,  
BENOIT

5 NOES: MEMBER:

6 ABSENT: 3 MEMBER: HAGERMAN, RUTHERFORD, GOMEZ

7 ABSTAIN: MEMBER:

8  
9 STATE OF CALIFORNIA }

10 COUNTY OF SAN BERNARDINO }

SS:

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12 I, Michele Baird, Clerk of the Governing Board of the Mojave Desert Air Quality Management  
13 District, hereby certify the foregoing to be a full, true and correct copy of the record of the action as the  
same appears in the Official Minutes of said Governing Board at its meeting of October 24, 2011.

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15 Clerk of the Governing Board,  
16 Mojave Desert Air Quality Management District.  
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